

## United States District Court

Albert RAINES, Pro Se

Docket #

vs

05-CV-10592-EFH

Comm of Massachusetts

Motion for Ex parte Jurisdiction

Petitioner moves and states that on April 29, 2005, petitioner has cause a number of motions to be mailed, via Regular mail to Superior Court with copies to both the office of the District Attorney, as well as appointed defense counsel. These motions are, to insure petitioners rights to participate in his defense, to prevent a defense, to free and open access to the Court, as well as petitioners rights to represent himself. . . In as much as petitioner currently has a similarly motion pending before the Court; 05-CV-10592-EFH, Petitioner. Petitioner Requests this Honorable Court, issue forthwith an Ex-parte Jurisdiction; Court order, granting that the petitioner, defendant be able to participate in his own defense.

Therefore to prevent any further discriminatory action; this petitioner Requests that an Ex-parte Jurisdiction be issued to the Superior Court, Suffolk County, sitting dates for petitioners motions forthwith. This petitioner states there is no plain, adequate or complete remedy at law, that an irreparable injury will result unless the Relief is granted; And that petitioner has the same or similar action currently pending resolution before this Court on docket # 05-CV-10592-EFH

Albert RAINES pro se # 040578

Albert RAINES Pro-se

200 North Street

Boston, MA 02114

5-9-05

Motion denied

Edward F. Hammit, S.D.

## United States District Court

Albert RAINES

Docket # 05-10592-EFH

vs

Comm of Massachusetts

Memorandum of Law

(1) Review of Habeas Corpus petition is matter of Courts discretion  
 Lewis v Delaware State Hospital D.C. Del 1980, 490 F. Supp 177

(2) IF any Essential item has been omitted from petition for writ of  
 habeas Corpus, the defect may be cured by information appearing in  
 Record. Dorsey v Gill App DC 1945, 148 F.2d 857, 80 U.S. App. D.C. 9 certiorari  
 denied 65 S.Ct. 1580, 325 U.S. 890, 89 L. Ed. 2003

(3) Once petition for writ of habeas Corpus is filed, unless Court is  
 of the opinion that petitioner is not entitled to an order to show cause,  
 writ must be awarded forth with, or order to show cause must be  
 issued. And thereafter, if Court concludes petitioner is entitled to  
 evidentiary hearing it must order one promptly. Harris v Nelson U.S.  
 Col 1969 893, et 1082, 394 U.S. 286, 22 L. Ed. 2d 281 Affirming Denial 89 S.Ct  
 1623, 394, 1025, 23 L. Ed. 2d 50

(4) After A petition for writ of Habeas Corpus has been filed, if it satisfies  
 Statutory Requirements, The Judge should issue the writ forthwith  
 Dorsey v Gill Supra.

(5) Federal Courts may not only grant evidentiary hearings to applicants  
 for writ of Habeas Corpus but must do so upon appropriate showing,  
 Harris v Nelson Supra

(6) If actual hearing in State Court was in any way inadequate or  
 if the State Judge determination was not on the merits or was not supported  
 by the Record. District Court presented with Habeas petition must hold  
 a factual hearing. U.S. Ex. Rel Headley v Mansouri D.C. N.Y. 1974  
 392 F. Supp 187

Albert Raines

Docket #05-10592-EFH

vs.

Comm of Massachusetts

Memorandum of Law

(7) Habeas Corpus need not always issue in the first instance, but if prima facie showing is made on face of petition, Judge may hold hearing on order to show cause to determine whether sufficient grounds exist for ~~the~~ issuance of the writ. *Behrens v Hironimus* C. Ct. 4 (W. Va.) 1748, 166 F.2d 245

(8) State Prisoner was entitled to Evidentiary hearing on his petition for habeas Corpus on grounds of Illegal arrest Illegal Search and Seizure Denial of Counsel at his interrogation, Self incrimination double Jeopardy and denial of due process. *Pope v Turner* C-40 (Utah) 1970, 426 F.2d 733 Habeas Corpus 745.1

(9) In Habeas proceeding, where a material issue of fact is presented it is the Courts duty to have petitioner produced in Court and hold a hearing at which an opportunity is offered to present evidence, *McCree v Hunter* C.C.A. 10 (Kan.) 1943, 138 F.2d 379 vacated 64 S.Ct. 1053, 322 U.S. 710, 88 C.2d 1553

(10) Federal Court has the largest power to control and direct the form of judgment to be entered in cases brought up before it on habeas Corpus. Thus a district Court may exercise its broad authority in habeas cases to grant any relief it deems necessary, including the permanent discharge of a successful habeas petitioner *Brogg v Abner* E.D. Ark 2000, 128 F.2d Supp 201 517 Habeas Corpus 794.1

Albert Raines

Albert Raines Pro-se #0400578  
200 N. W. Street  
Boston, Mass 02114

Exhibit A1

Suffolk 35

Suffolk Superior Court  
Criminal Division

Albert RAINES

c

vs

Docket # 04-10100

Comm of Massachusetts

001

002

## Certificate of Service

I, Albert RAINES, swear By penalty and Pains of the Law that a true and correct copy of Atty/Client communication, plus the following motions; motion to Dismiss Speedy Trial Violation, motion to Produce material evidence or alternatively; motion to Dismiss Due to Lost or Destroyed Evidence affidavit and memorandum of law; motion for Disclosure of acts of Defendant allegedly Relevant to the charges, motion of the Defendant to be furnished with statements of Persons, Rewards or Incentives; motion to Identify Informant; motion to produce Reports motion for notice of Expert Testimony, have been mailed Regular mail on/about April 23, 2005 and in addition true and correct copies have been fax to the United States District Court Docket # 05-CV-10592 EFH, Suffolk Superior Court Docket # 04-10100 and the District attorneys office % Jen Nickman Docket # 04-10100 Both Fax and Regular mail have been sent This day.

Albert RAINES #0400528

200 Norfolk Street

Boston MA 02114

c United States District Court #Docket # 05-CV-10592 EFH

Suffolk Superior Court #Docket # 04-10100

District attorneys office % Jen Nickman #Docket # 04-10100

Atty Camp Bell

101 Tremont Street

Fax 617-338-1345

April 22, 2005

Docket # 04-10100

Atty Camp Bell,

I am writing you in regards to the Suppression motion, you filed and the letter I received. In as much as you disregarded my Request and Instruction in regards to filing a motion to Suppress, and your inability to be reached by phone or letter, and your failure to file the two motions (Lost or Destroyed Evidence the Aptkin) and (Motion for Bill of Particulars) that I hand delivered to you on your visit here at Boston Street Jail. It is my opinion that you are not representing my Best Interests.

Wherefore Be advised that, I am (1) fax a copy of this letter to the Court to both Superior Court as well as the Federal District Court. In Conjunction I am in addition making copies of this letter along with a Certificate of Service that includes additional motions to be filed before May 10<sup>th</sup> so as the defendant may receive and set future dates for all my motions to be heard.

Mr. Campbell, Be advised that it is my intention to file a motion asking to proceed Pro-se and have you Relieved as Counsel of Record - -

To Stop this action you must immediately file a Discovery motion for the Aptkin in this case (Lost or Destroyed Evidence) as well as a motion for a Bill of Particulars. Both motions were hand written and given to you on your visit with the defendant at the Jail. - - 2<sup>nd</sup>ly there are a number of other motions I have compiled to be filed before May 10<sup>th</sup> 2005 so that dates may be received for each motion on May 10<sup>th</sup> 2005.

Thanking you in advance

Albert Ramirez

U. S. District Court # Docket # 05-cv-10592 EFH

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ALBERT RAINES, Pro Se  
(Printed Name)  
ID # 240578  
Suffolk County Jail  
200 Nashua Street  
Boston, MA 02114



Commonwealth of Massachusetts

Suffolk SS

Superior Court

Comm v Albert RAINIER

# 04-18100-001-002

motion for Disclosure of Acts of Defendant  
Allegedly Relevant to the charges

Now comes the Defendant, and moves this Honorable Court to order the Commonwealth to disclose to him whether the Commonwealth intends to offer proof of acts of the defendant allegedly occurring before or after the offense charged, and if so, the particulars of the acts.

Defendant surmises that the prosecution may attempt to introduce these matters at trial of this case as purportedly relevant as a "consciousness of guilt" or as germane to purported "pattern of conduct." The defendant seeks notice of any other purported acts so that appropriate motions in limine may be prepared. E.g. Comm v Nightowen, 400 Mass 267, 269-271 (1982) Comm v Yelle, 19 Mass App Ct. 465, 471-472 (1985).

Advance notice of the Commonwealth's intention to introduce extramurus acts is essential so that the admissibility vel non of such evidence may be determined outside of the jury's presence. See Comm. v Rivera, 393 Mass 224, 230 (1984). The requested information is also essential to preparation for trial, the effective assistance of counsel at trial, and due process of law, Rights guaranteed by the Sixth and Fourteenth Amendments to the United States Constitution and Articles XI and XII of the Massachusetts Declaration of Rights.

Respectfully Submitted  
Albert Rainier # 040578

200 Lakeview St.  
Boston, Ma. 02114

Commonwealth of Massachusetts

Suffolk

SS

Superior Court

Comm v. Albert RAINES

# 04-10-100 - 001-002

Motion of the Defendant to Be Reversed with  
Statements of Promises, Rewards or Inducements

Now comes the defendant in the above - entitled matter, and  
respectfully moves that this Honorable Court direct any and all  
information known to the Commonwealth or that by the exercise  
of due diligence can be ascertained by the Commonwealth of  
Statements of promises, inducements or rewards of any kind or  
nature made to any witness or witnesses that the Commonwealth  
intends to rely upon in support of the accusations contained in  
the complaint.

Respectfully Submitted

Albert RAINES # 0400578

205 Essex Street

Boston, MA 02114



Commonwealth of Massachusetts

Suffolk SS

Comm v Albert RAINIER

Superior Court

# 04-10-100-001-002

Motion to produce Reports

Now comes the defendant in the above entitled matter, and moves this Honorable Court to order the Commonwealth to provide the defendant with any and all reports/documents relevant to the defendant and the charge of Distribution at the St. Francis House on or near 39 Boylston Street Boston.

Said Evidence is necessary for the preparation of the defendant's defense.

Respectfully Submitted

Albert RAINIER # 0400578

200 Joshua St.

Boston, MA 02114

Suffolk SS

Comm v Albert RAINIER

Superior Court

# 04-10100 - 001-002

Motion to Identify Informant

Now comes the defendant in the above entitled matter, and moves this Honorable Court to order the Commonwealth to provide the defendant with the name, address and date of Birth of the person who is alleged to have contacted police and provided information to the police which lead to the stop of the defendant and subsequent search of the defendant.

In Support of this motion, the defendant states the Requested discovery is necessary to prepare a motion to Suppress And litigate as well as present a defense.

Respectfully Submitted

Albert RAINIER # 0400578

200 Ashua St.

Boston, MA 02114

Commonwealth of Massachusetts

Suffolk SS.

Superior Court

ISO # 04-10100-001-002

Comm v Albert Raines

Motion For Notice Of Expert Testimony

Now comes the defendant in the above entitled action and hereby respectfully moves this Honorable Court to direct the Commonwealth to provide the defendant with notice of any expert testimony which it intends to present at trial.

In particular, the defendant request that the Commonwealth provide him with:

- (1) The names and addresses of any such witnesses;
- (2) The expert's qualifications;
- (3) The opinion to be offered, and the basis for that opinion;
- (4) The details of any tests, including copies of any records, reports or tests, relied upon by the witness in forming his or her opinion.

The defendant states that such notice is essential to preparation of his defense and effective assistance of counsel, Sixth and Fourteenth Amendments to the United States Constitution, Article 12 of the Massachusetts Declaration of Rights.

Respectfully Submitted

Albert Raines # 0400578

200 Abshire St.

Boston, MA 02124

Suffolk County,

Criminal Division

Superior Court

Albert Ramirez

Docket # 04-10100

vs

001

Comm of Massachusetts

002

Motion To Dismiss (Rule 36) and Constitutional Standard. (Speedy Trial)

The defendant moves, Pursuant to Mass R. Crim P. 36, a, B, C and the Constitutional Standard, That the above entitled matter be dismissed due to the failure of the Commonwealth to try him within one year after the arrest date and indictment date, less excludable time, as provided in Mass R. Crim P. 36.

Rule 36; States the applicable Standard for the Speedy Trial Rights of those detained within the Commonwealth. . .

. . . Any person who is detained within the Commonwealth upon the unexecuted portion of a Sentence imposed pursuant to a Criminal Proceeding is entitled to be tried upon any untitled indictment or Complaint pending against him in any Court in this Commonwealth within the time prescribed by Subdivision (C) of this Rule. . .

. . . The defendant avers that waiver of a fundamental Right cannot be assumed from a Silent Record. *Barker v. King* 407 U.S. 514, 92 S.Ct. 2182, 33 L.Ed. 2d 10 (1972). See also *State v. Williams* Supra, 85 Wash.2d at 31-32, 530 P.2d 225. . . The defendant is not bound by the decision or default of his Counsel at a time when he did not comprehend his rights. *Kempsey v. Cady*, 405 U.S. 504, 92 S.Ct. 1048, 31 L.Ed. 2d 394 (1972). . .

. . . An attorney is without authority to waive any substantive right of his Client unless specifically authorized to do so. *State v. Dault* 19 Wash. app. 709, 528 P.2d 43. Accord *Morgan v. Burke* 17 Wash. app. 193, 563 P.2d 1260 (1977). *Cross v. Will* 10 Wash. app. 141, 749, 516 P.2d 1063 (1973).

In determining whether defendant has been denied speedy trial, reasonableness of Commonwealth action having significance with respect to delay must be determined on consideration of special circumstances of each case.

• • • Criminal Law 577-15(4), 110K 577-15(8) formerly 110K 576(1)

Key Issue was whether Commonwealth took reasonable action to prevent undue delay in bringing defendant to trial. U.S. Const. Amend 6, M.G.L. Const pt. 1 art. 11. • • • Comm. v McGrath 348 Mass 748, 752, 205 N.E.2d 710, 714 • • • A defendant has no duty to bring himself to trial; the State has that as well as the duty of insuring that the trial is consistent with due process • • • Barker v Wingo (P 527, 92 S. Ct 972/90) • • • Barker v Wingo 407 U.S. 514, 528, 92 S. Ct. 2182, 33 L. Ed. 2d 101

Wherefore it is prayed, that the above captioned case be immediately dismissed for lack of want of prosecution and for violation of Rule 36, and Speedy Trial violation. Since there has not been a trial date set in over a year.

Tr. Court we pray  
 Albert Raines Pet -ss  
 Albert RAINES # 0400578  
 200 Washington Street  
 Boston, Mass 02114



Suffolk County

Superior Court

ALBERT RAINES

Docket # 04-10100

VS

001

Commonwealth of Massachusetts

002

Affidavit

I swear the foregoing is true and correct by the pains and penalty of law;

- (1) I swear I am, Albert RAINES, defendant in the above captioned case.
- (2) That on January 22, I was arrested and continuously held in Woburn Street Jail on a \$2500.00 Bail.
- (3) That on February 18<sup>th</sup> I was informed that I was indicted in the Superior Court Suffolk County.
- (4) That I, Albert RAINES was arraigned on February 23, 2004 for the charges of Poss with intent in a School Zone Class B and 2<sup>nd</sup> Subsequent.
- (5) That I have been held on Bail continuously on said charges for over a year.
- (6) That as of this date \_\_\_\_\_ 2005 I have not been set a trial date.

Date:

Sincerely Submitted

ALBERT RAINES #0400578 PRO-SE  
 200 Woburn Street  
 Boston, MASS 02114



Suffolk County

Superior Court

Criminal Division

Albert RAINES

Docket # 04-1000

vs

-001

Commonwealth of Massachusetts

-002

Motion to Produce Material Evidence or  
Alternatively, Motion to Dismiss Due to  
Lost or Destroyed Evidence

The defendant moves, that the motion in the above entitled case be produced as material, in Escapatory Evidence for the purpose of DNA testing, and further the defendant moves, pursuant to mass R. Crim P. 13 Article 12 of Massachusetts Declaration of Rights and the due process clause to the United States Constitution that the above entitled matter be dismissed due to the Commonwealth's loss or destruction of evidence, thus denying the defendant his right to a fair trial. *Comm v Willie* 400 Mass 707, 510 N.E. 2d 258 (1987) *Comm v Olszewski*, 401 Mass 749, 519 N.E. 2d 587 (1988) *Comm v Troy* 405 Mass 253, 540 N.E. 2d 162 (1989)

In the alternative, The defendant moves, that all testimony and evidence relating to the lost or destroyed evidence be excluded from trial. *Olszewski*, *Supra* at 753.

Albert RAINES # 0400378 Pres ss

200 Vester Street

Boston, MA. 02114

Suffolk County

Criminal Division

Superior Court

Albert RAINIER

Docket # 04-10100

vs.

- 001

Comm of Massachusetts

- 002

## Memorandum of Law

The Supreme Judicial Court, in *Comm v Olsewski*, 401 Mass 749, 519 N.E. 2d 587 (1988) set out in detail the law concerning lost or destroyed evidence. The Court started with *Comm v Redding*, 382 Mass 154, 157, 414 N.E. 2d 347 (1980) which stressed that the prosecutor should make every effort to disclose to the defendant exculpatory evidence which is available to the prosecution. It was emphasized in that case *Comm v St. Germain*, 381 Mass 256, 408 N.E. 2d 1358 (1980) that the "Police are part of the prosecution and that the Commonwealth is to be held responsible for non-disclosure by them." *Olsewski* Supra at 753. Similarly, in *Comm v Lam Hue To*, 391 Mass 301, 311, 464 N.E. 2d 776 (1984) the Court, "defined prosecutorial misconduct to include not only lack of disclosure by the prosecutor but also the inept and bungling performance of the police, which is attributed to the prosecutor." *Olsewski* Supra. SJC in *Comm v Gallarelli*, 399 Mass 17, 20 n. 4, 502 N.E. 2d 816 (1987), held the prosecutor responsible for the police loss of evidence despite the fact that he was unaware of it.

The Court recognized that the loss of evidence which is material and potentially exculpatory poses special problems for a defendant because he is put in a position where he is unable to establish the exculpatory nature of the lost or destroyed evidence. Because the evidence has been destroyed, it is no longer possible to determine whether the defendant would have obtained any evidence of an exculpatory nature had it been made available to him for inspection or examination.

To require the defendant at this stage to prove that the evidence was in fact exculpatory would, however, convert the disclosure duty established by *Brady v Maryland* 373 U.S. 83 (1963) and its progeny into an empty promise, easily circumvented by suppression of evidence by means of destruction rather than mere failure to reveal. It was in this context that the Court stated in *Comm v Charles* 397 Mass 1, 13-14 (1986) that we have repeatedly stressed the need for prosecutors and police to do their utmost to preserve and present exculpatory evidence which is available to the prosecution *Albrezinski Supra* at 753-54.

In *Comm v Neal* 392 Mass 1, 464 N.E.2d 1356 (1984) the Court indicated that, where the evidence is lost or destroyed, a defendant would be entitled to relief if he establishes a reasonable possibility, based on concrete evidence rather than a fertile imagination, that access to the evidence would have produced evidence favorable to his cause. *Id* at 754 (Quotation marks and citations omitted)

Submitted by

Albert RAINES #0400571 Pro-SE  
200 North Street  
Boston, Mass 02114

Suffolk County

Criminal Division

Superior Court

Affidavit

Under Oat, I depose and state that;

- (1) My name is Albert Rainer
- (2) I am pro-se Counsel in this Honorable Court
- (3) I Allegedly Spit and unknown item in a napkin
- (4) The Napkin and unknown item was Recovered and is Alleged to Be Crack Cocaine.
- (5) The Contraband Crack Cocaine was Recovered on the the Alleged Napkin that Albert Rainer Spits in.
- (6) The Napkin is material and contains Stela (DNA) from Being Spits in.
- (7) Production and testing of the Napkin will produce evidence Favorable to the defendant's cause.
- (8) The production of the Napkin will produce material and Exculpatory evidence.

Submitted By

Albert Rainer #0400578 pro-se  
200 North Street  
Boston, MA. 02114